

Agricultural Marketing Service, USDA

§ 205.672

accessible by certified organic production or handling operations for examination by the Administrator, the applicable State organic program's governing State official, or the certifying agent.

(b) The Administrator, applicable State organic program's governing State official, or the certifying agent may require preharvest or postharvest testing of any agricultural input used or agricultural product to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" when there is reason to believe that the agricultural input or product has come into contact with a prohibited substance or has been produced using excluded methods. Such tests must be conducted by the applicable State organic program's governing State official or the certifying agent at the official's or certifying agent's own expense.

(c) The preharvest or postharvest tissue test sample collection pursuant to paragraph (b) of this section must be performed by an inspector representing the Administrator, applicable State organic program's governing State official, or certifying agent. Sample integrity must be maintained throughout the chain of custody, and residue testing must be performed in an accredited laboratory. Chemical analysis must be made in accordance with the methods described in the most current edition of the *Official Methods of Analysis of the AOAC International* or other current applicable validated methodology determining the presence of contaminants in agricultural products.

(d) Results of all analyses and tests performed under this section:

(1) Must be promptly provided to the Administrator; *Except*, That, where a State organic program exists, all test results and analyses shall be provided to the State organic program's governing State official by the applicable certifying party that requested testing; and

(2) Will be available for public access, unless the testing is part of an ongoing compliance investigation.

(e) If test results indicate a specific agricultural product contains pesticide residues or environmental contami-

nants that exceed the Food and Drug Administration's or the Environmental Protection Agency's regulatory tolerances, the certifying agent must promptly report such data to the Federal health agency whose regulatory tolerance or action level has been exceeded.

§ 205.671 Exclusion from organic sale.

When residue testing detects prohibited substances at levels that are greater than 5 percent of the Environmental Protection Agency's tolerance for the specific residue detected or unavoidable residual environmental contamination, the agricultural product must not be sold, labeled, or represented as organically produced. The Administrator, the applicable State organic program's governing State official, or the certifying agent may conduct an investigation of the certified operation to determine the cause of the prohibited substance.

§ 205.672 Emergency pest or disease treatment.

When a prohibited substance is applied to a certified operation due to a Federal or State emergency pest or disease treatment program and the certified operation otherwise meets the requirements of this part, the certification status of the operation shall not be affected as a result of the application of the prohibited substance: *Provided*, That:

(a) Any harvested crop or plant part to be harvested that has contact with a prohibited substance applied as the result of a Federal or State emergency pest or disease treatment program cannot be sold, labeled, or represented as organically produced; and

(b) Any livestock that are treated with a prohibited substance applied as the result of a Federal or State emergency pest or disease treatment program or product derived from such treated livestock cannot be sold, labeled, or represented as organically produced: *Except*, That:

(1) Milk or milk products may be sold, labeled, or represented as organically produced beginning 12 months following the last date that the dairy animal was treated with the prohibited substance; and

(2) The offspring of gestating mammalian breeder stock treated with a prohibited substance may be considered organic: *Provided*, That, the breeder stock was not in the last third of gestation on the date that the breeder stock was treated with the prohibited substance.

§§ 205.673–205.679 [Reserved]

ADVERSE ACTION APPEAL PROCESS

§ 205.680 General.

(a) Persons subject to the Act who believe they are adversely affected by a noncompliance decision of the National Organic Program's Program Manager may appeal such decision to the Administrator.

(b) Persons subject to the Act who believe that they are adversely affected by a noncompliance decision of a State organic program may appeal such decision to the State organic program's governing State official who will initiate handling of the appeal pursuant to appeal procedures approved by the Secretary.

(c) Persons subject to the Act who believe that they are adversely affected by a noncompliance decision of a certifying agent may appeal such decision to the Administrator, *Except*, That, when the person is subject to an approved State organic program, the appeal must be made to the State organic program.

(d) All written communications between parties involved in appeal proceedings must be sent to the recipient's place of business by a delivery service which provides dated return receipts.

(e) All appeals shall be reviewed, heard, and decided by persons not involved with the decision being appealed.

§ 205.681 Appeals.

(a) *Certification appeals.* An applicant for certification may appeal a certifying agent's notice of denial of certification, and a certified operation may appeal a certifying agent's notification of proposed suspension or revocation of certification to the Administrator, *Except*, That, when the applicant or certified operation is subject to an approved State organic program the ap-

peal must be made to the State organic program which will carry out the appeal pursuant to the State organic program's appeal procedures approved by the Secretary.

(1) If the Administrator or State organic program sustains a certification applicant's or certified operation's appeal of a certifying agent's decision, the applicant will be issued organic certification, or a certified operation will continue its certification, as applicable to the operation. The act of sustaining the appeal shall not be an adverse action subject to appeal by the affected certifying agent.

(2) If the Administrator or State organic program denies an appeal, a formal administrative proceeding will be initiated to deny, suspend, or revoke the certification. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Uniform Rules of Practice or the State organic program's rules of procedure.

(b) *Accreditation appeals.* An applicant for accreditation and an accredited certifying agent may appeal the Program Manager's denial of accreditation or proposed suspension or revocation of accreditation to the Administrator.

(1) If the Administrator sustains an appeal, an applicant will be issued accreditation, or a certifying agent will continue its accreditation, as applicable to the operation.

(2) If the Administrator denies an appeal, a formal administrative proceeding to deny, suspend, or revoke the accreditation will be initiated. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Uniform Rules of Practice, 7 CFR part 1, Subpart H.

(c) *Filing period.* An appeal of a noncompliance decision must be filed within the time period provided in the letter of notification or within 30 days from receipt of the notification, whichever occurs later. The appeal will be considered "filed" on the date received by the Administrator or by the State organic program. A decision to deny, suspend, or revoke certification or accreditation will become final and nonappealable unless the decision is appealed in a timely manner.

(d) *Where and what to file.* (1) Appeals to the Administrator must be filed in